

## **THIRD MARITIME SAFETY PACKAGE**

### **PASSENGERS – PROPOSAL FOR A REGULATION ON THE LIABILITY OF CARRIERS OF PASSENGERS BY SEA IN THE EVENT OF ACCIDENTS**

**Comments by the International Chamber of Shipping (ICS)**

#### **QUESTION 1 – SCOPE OF APPLICATION**

Air-cushioned vehicles are excluded from the scope of application of the 1974 Athens Convention and we can recall no discussion on this issue prior to the adoption of the 2002 Protocol. They are also excluded from the 1976/96 Limitation Convention.

In at least some States (the UK is an example) hovercraft passenger claims and the carrier's right to limit in respect thereof are dealt with under Carriage by Air Acts.

Furthermore, it seems unlikely that there are enough of such craft remaining in service to justify harmonising national laws to address the issue.

#### **QUESTION 2 – SCOPE OF APPLICATION**

The question of extending the Athens Convention regime to inland waterways is not one which ICS has special competence to address. However, the fact that it has been thought appropriate to adopt special instruments to deal with inland navigation suggests that it would be prudent in the first instance to consider how they could be made more attractive to Member States rather than to assume that it should be subject to a maritime instrument.

#### **QUESTION 3 – LIMITS OF LIABILITY**

We agree that it would be appropriate to promote the object of a uniform regime with identical limits within the EU, and we believe the limits should be those specified under the Athens Convention 2002.

#### **QUESTION 4 – LIABILITY IN RESPECT OF TERRORISM**

ICS fully shares the view of the Commission that passenger liability should be subject to a global regime adopted by IMO. As stated at the consultation meeting on 18 February the industry has no wish to discourage adoption and entry into force of the Athens Convention but accepts the advice of the insurance industry that they are not in a position to provide cover in respect of terrorism. We have argued that the phrase "act of war, hostilities ...." in the Athens Convention should be interpreted as including "terrorism" in order to exclude liability for such acts, thereby making it possible to obtain the certificate required. This, we believe, would be the most practical way of overcoming the very real obstacle to ratification of the Convention at the moment.

## **QUESTION 5 – ADVANCE PAYMENTS**

We do not believe that an advance payments rule should be added to the Community instrument implementing the Athens Convention. There is a distinction between the passenger liability instruments in the air and rail sectors, which are based on strict liability, and the Athens Convention, which includes fault-based liability. Furthermore – and this is an important consideration - in practice we are not aware that there has been any problem with prompt payment to claimants under the Athens regime by shipowners and their liability insurers, who are anyway subject to direct action under the 2002 Protocol.

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### **FREIGHT – PROPOSAL FOR A REGULATION ON FINANCIAL GUARANTY FOR SHIPS**

#### **Comments by the International Chamber of Shipping (ICS)**

#### **QUESTION 1 – EVIDENCE OF FINANCIAL SECURITY FOR ALL SHIPS ENTERING COMMUNITY WATERS**

The issue of compulsory third party liability cover for merchant ships was discussed some years ago at IMO. It has theoretical attractions: the vast majority of ocean-going shipping has such insurance through the P&I system, and it may be felt those ships which do not have such cover are those most likely to cause trouble. Precisely the same considerations were discussed by IMO, which concluded that the most appropriate way forward was to develop guidelines, introduced in 1999. The principal reason for not going further was the difficulty in determining exactly what liabilities should be covered over and above those already demanding compulsory insurance under international convention (recognising that HNS and the Bunkers Convention are still not in force), coupled with the difficulty of determining the validity of certificates issued other than by well-known insurers (see Q3 and Q4 below).

In sum, ICS wonders whether the administrative difficulty in creating an effective compulsory insurance system regime is justified in terms of the supposed benefits to be derived from it, and suggests that better use be made of the IMO Guidelines on the subject.

#### **QUESTION 2 – ESTABLISHMENT AND VERIFICATION OF THE FINANCIAL GUARANTY**

The question is not easy to answer in a vacuum. The issue of a certificate of financial responsibility presupposes that a clear decision has been taken on the liabilities to be covered and the acceptability of the cover provided.

#### **QUESTION 3 – CRITERIA FOR INSURERS QUESTION 4 – RECOGNITION OF CERTIFICATES**

As stated at the consultation meeting on 18 February, a requirement to issue a certificate of insurance has limited value unless the certificate has been issued by an entity which is financially sound. This implies that, other than in the case of known entities like the members of the International Group of P & I Clubs, a mechanism would need to be in place to assess the “credentials” of those providing insurance, not only within the EU but worldwide. This would be a complex and no doubt politically sensitive undertaking.

In addition, the issue of self-insurance, which can be a sound economic practice, needs to be taken into account and not unduly restricted.

## **QUESTION 5 – ACCESSIBILITY OF INSURANCE**

The matter of direct action has been a subject of intense debate in the discussions leading up to several international liability instruments developed by IMO. ICS believes that a future EU regime should adhere strictly to the equivalent international regime, whereby direct action is provided for pollution and passenger liabilities, but not others.

## **QUESTION 6 – NOTIFICATION OF CERTIFICATE**

It has been suggested in the past that a P & I certificate should be made available to Port State Control inspectors along with the certificates required under the relevant IMO Conventions. If advance information is to be made available under the SafeSeaNet system, then the existence of a P & I certificate can readily be added to that information if it provides

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### **MODIFICATION OF THE TRAFFIC MONITORING DIRECTIVE**

#### **Comments by the International Chamber of Shipping**

#### **QUESTION 1 – LONG RANGE IDENTIFICATION AND TRACKING (LRIT)**

The text under this heading seems to contain an analysis of recent developments rather than asking any specific question. However, it correctly states that the discussion on LRIT in IMO was initiated in the context of measures to enhance maritime security. More recently there has been increasing support for broadening its application to include Search and Rescue and pollution control. IMO has developed a framework for LRIT which limits access to tracking data as follows:

- Flag State – global access to all ships flying its flag.
- Coastal States – ships of all flags entering a declared area of interest.
- Port States – ships of all flags which have declared the intention to enter a port of that State.

It will be noted that at present there is no IMO plan to link LRIT data access to a PSSA.

In the opinion of ICS there are a number of options which the Commission could consider to address the perceived need for greater knowledge of ship movements within the EEZ of Member States. For example, consideration could be given to linking existing AIS shore-based stations to produce a longer-range system, mirroring the tracking capability demonstrated by AIS Live. The Commission might even find it convenient to subscribe to AIS Live. There would be limited range of coverage from the shore but about 80 nautical miles should be achievable. The advantage would be that all AIS data (ship identity, position, course, speed, destination, dangerous cargo, etc.) would be in the database. Alternatively, Europe could continue to pursue an IMO LRIT system based upon the INMARSAT C carriage requirement. However, the decisions taken in February 2005 by the IMO Sub-Committee on Radiocommunications and Search and Rescue, which imply a slower development of LRIT at IMO than the United States had hoped for, may mean that there will be less support for a global standard than the industry had been anticipating. In that event it might be possible to set up a regional tracking system in Europe, several countries having already spoken in favour of regionally based but interlinked systems.

#### **QUESTION 2 – USE OF CERTIFIED SPACE-BORNE POSITIONING SYSTEMS**

Again, it is not entirely clear what question is being asked. SOLAS requires virtually all ships to carry a GNSS receiver, approved by IMO. Today GPS and GLONASS are the approved systems. GALILEO is similarly expected to be submitted for approval in due course, though not for several years.

The Commission's background note suggests that the Commission intends to require the carriage of "certified" positioning systems equipment for ships calling at European ports. If this means IMO-approved equipment then ICS is fully in

agreement. But if it implies a requirement specifically to carry a GALILEO receiver the industry would strongly oppose it as exceeding the requirements of SOLAS.

### **QUESTION 3 – ONE STOP SHOP CONCEPT**

While it is not entirely clear from the paper how the Commission intends to develop the SafeSeaNet system to simplify reporting procedures, the principle of greater co-ordination is obviously welcomed by the industry.

### **QUESTION 4 – CARRIAGE OF AIS ON BOARD FISHING VESSELS**

ICS has no locus to speak on behalf of the fishing industry, but would be concerned if a requirement to carry AIS on board fishing vessels were to jeopardise the safety of merchant ships by overwhelming the system in areas of high fishing vessel density.

More specifically, the policy which the US Coast Guard is understood to be likely to pursue may also be thought attractive for EU purposes, as follows:

“Ships and boats that are not required to carry a Class A AIS Device and are longer than 20m will be required to carry a Class B AIS Device while boats shorter than 20m will be encouraged to carry either a Class B or a Receive-only AIS Device.”

### **QUESTION 5 – POSSIBLE MEASURES IN ICE CONDITIONS**

ICS would certainly support the proposition that Member States should ensure the provision of environmental and other information, including ice conditions, to vessels entering or leaving their ports.

As regards the pre-notification of ice classification, we have not consulted members, but believe that they would be in agreement with this proposal, as with the proposition to introduce a harmonised standard for ice-class rules.

### **QUESTION 6 – WASTE DELIVERY MANAGEMENT**

This remains an area of uncertainty and confusion not only internationally but also within Europe. We understand that EMSA is concluding a study on the subject and it would be helpful to know when the results are likely to be available. There is a concern within the industry that in some ports there is a presumption that ships will land a set amount of waste of designated types. However, an improved information flow can only assist in this regard, and is in principle to be welcomed.

### **QUESTION 7 – POLLUTION DETECTION**

### **QUESTION 8 – TECHNICAL REQUIREMENTS AIMED TO EASE THE IDENTIFICATION OF THE ORIGIN OF OIL SPILLS AT SEA**

These two questions are related. ICS can certainly support any improvement in the monitoring of pollution caused by illegal discharges, and to that extent DNA tagging of oil is a potentially useful mechanism. However, it is clear that DNA tagging has not been without its difficulties and any system of detection needs to be sufficiently

foolproof to avoid any possibility of false accusation. There have been enough protests against allegedly unjust conviction for contraventions of MARPOL to suggest, at the very least, a lack of confidence in current detection systems.

One matter which needs to be borne in mind is that where ships are subject to diversion and/or delay to respond to accusations of illegal discharge, and are subsequently found to be innocent, they should be entitled to compensation for loss of revenue.

#### **QUESTION 9 – SHIP TO SHIP TRANSFER OF OIL**

ICS supports the suggestion made at the consultation meeting with industry on 18 February that a Working Group be established to look into this issue in greater detail. As the Commission is aware, it is industry practice to conduct STS operations in accordance with the ICS/OCIMF Ship to Ship Transfer Guide (Petroleum). We believe it is generally agreed that the conduct of STS operations has always been professional and carried out with due care for safety and environmental protection. One contributory factor to the safe conduct of STS operations is, of course, that they should take place in sheltered waters. However, since it is clear that some Member States have potential concerns, detailed discussions, under the umbrella of EMSA, would no doubt help to determine how these can be addressed without unduly restricting an important operational procedure for the oil industry.

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### **CLASSIFICATION SOCIETIES**

#### **Comments by the International Chamber of Shipping**

#### **QUESTION 1 – ACCUMULATION OF FUNCTIONS BY CLASS**

While there are five sub-questions under this heading, they all relate to the question posed by the Commission orally during the course of the consultation meeting with industry on 18 February: “Does the fact that the shipowner pays mean that class is not doing the job properly?”

The delegation of statutory survey work to the classification societies has progressively increased over the years, in response to both the growing complexity of regulation and the tendency on the part of many administrations to “out-source” functions which are not regarded as central to government activity. While the open registers have traditionally delegated all or virtually all of their statutory survey work to the class societies, most traditional maritime administrations have now substantially followed suit, concentrating many of their inspection resources on port state control rather than on surveying ships under their own flag. It must also be remembered that classification surveys and regulatory surveys often dovetail together, and there are benefits to be derived from ship surveys which take both functions into account.

On the other hand, there is clearly a perception that the fact that the class society is contracting with the flag state and with the shipowner in parallel must give rise to abuse. The question ICS would ask is whether that perception is borne out by reality, since it is important to challenge the premise before considering the options.

However, to address the specific questions:

(a) Should Member States take back full responsibility for statutory survey work?

In our opinion this is an unrealistic proposition. In many administrations, including those in the EU, there is little or no expertise available to conduct certain types of statutory survey work, nor do we believe there would be a political will to build up the bureaucracy that it would entail. We therefore do not think that this is an option worth pursuing.

(b) Should statutory work be carried out by different inspectors within the same organisation?

To our minds this would be an artificial division of labour. Not only is there benefit to be derived from the cohesion provided by conducting class and statutory work together, but the division of labour could create a lack of communication which would diminish, rather than enhance, overall safety.

(c) Should statutory work be carried out by different subsidiaries within the same organisation?

To our minds this would create a purely artificial distinction and would simply increase the risks mentioned under (b) above.

(d) Should statutory survey work be carried out by different organisations?

This question again presupposes that there is a conflict of interest between class and statutory work where the same class society fulfils both functions, which we question as explained above. If that were so, dividing the responsibility between two class societies might at first sight help to address it, but could instead simply give rise to a lack of co-ordination between the two societies which reduced overall safety. Such a process would also clearly be less cost-effective than the current system, and the cost implications would need to be considered.

(e) Should the invoice for statutory work be sent to the Member State rather than to the owner?

This could of course be done, but to what purpose? The Member State would no doubt wish to re-invoice the owner, simply adding another level of bureaucracy, and consequential cost, into the exercise.

In sum, all of these suggested options seem to bring with them disadvantages which outweigh the supposed benefits to be derived from changing the current system. If there is clear evidence that the current system is subject to abuse, ICS will be happy to contribute to positive solutions, but we are not convinced that a real problem has been identified.

## **QUESTION 2 – SYSTEM OF SANCTIONS**

## **QUESTION 3 – ACCESS TO SHIP FILES REGARDLESS OF FLAG**

## **QUESTION 4 – ASSESSMENT OF RECOGNISED ORGANISATIONS BASED ON INFORMATION DRAWN FROM VISITS TO SHIPS**

## **QUESTION 5 – LIMITED RECOGNITION**

## **QUESTION 6 – SECURITY**

These are questions which only the classification societies can answer with authority. However, the shipping industry depends upon the professional integrity of the classification societies and recognises that sanctions for failure to maintain the required standards are a necessary part of any system of checks and balances. While the ultimate sanction must be suspension or withdrawal of recognition, that would clearly be a final resort, causing upheaval not only for the classification society concerned but also for the ships for whose statutory survey work it was responsible. ICS would suggest that financial penalties, sufficient in severity to act as a clear deterrent, should be the normal form of sanction.

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### **MODIFICATION OF THE PORT STATE CONTROL DIRECTIVE (95/21/EC)**

#### **Comments by the International Chamber of Shipping**

#### **QUESTION 1 – INCENTIVES TO QUALITY SHIPPING**

ICS greatly welcomes the principle that port state control should not only include elements for targeting poor ships, but also for rewarding in an effective way those which offer quality. The most effective reward, given the excessive number of ship inspections today for a whole range of purposes, is probably a reduced frequency of inspections, allowing a ship to be exempted from PSC for an extended period. For this to be really beneficial, there needs to be enhanced co-ordination not just within the Paris MOU, but between the Paris and Tokyo MOUs and if possible, the US Coast Guard. In our understanding the information in the databases should by now be sufficiently comprehensive to ensure that inspections are concentrated on higher risk vessels, and likewise that quality vessels are exempted from undue inspection.

It is disappointing to ICS to learn that the revision of the Directive will not replace the 25% requirement with a global target of 100% of ships inspected within the EU. For several years ICS has been pressing for review of the 25% criterion, believing that it has outlived its value, and that the rush to attain the 25% figure has contributed to “soft” targeting as opposed to targeting of risky vessels. Recognising that there is a commitment on the part of the Paris MOU to make such a change, we would strongly suggest that the wording of the revised Directive should be sufficiently flexible to allow a change in the criteria during the life of the Directive, rather than having to wait until it is revised again, perhaps a decade from now.

#### **QUESTION 2 – REFUSAL OF ACCESS**

Refusal of access to EU ports is obviously an ultimate sanction. While ICS has no objection to the concept, it clearly has to be used sparingly and be beyond reproach. As long as these conditions are met, there is no reason to discourage extending it to all types of ships. Indeed, it is more equitable if it is applied to all types of ships and not just to certain sectors.

However, we would be opposed to any criterion differentiated by flag. Certain flags, by dint of their record, will attract a higher targeting frequency, but refusal of access should be determined strictly on the condition and record of individual ships and not on any pre-determined targeting factor.

#### **QUESTION 3 - QUALIFICATION AND TRAINING OF PORT STATE CONTROL INSPECTORS**

Any regional PSC regime must have common standards if it is to be respected by the industry and by flag states. The qualification and training of PSC inspectors is central to that objective, and in principle ICS therefore supports a harmonised Community scheme for the competence and training of such inspectors, ensuring that this is compatible with Paris MOU requirements applying to non-EU members.

**QUESTION 4 – EXPANDED INSPECTION AND SURVEYS UNDER DIRECTIVE  
1999/35/EC**

ICS has no special comment on this proposition.